

APPEAL NO. 050331
FILED MARCH 31, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 26, 2005, a Texas Workers' Compensation Commission (Commission) hearing officer, acted upon the appellant's (attorney) Application For Attorney's Fees (TWCC-152) by issuing a Commission Order for Attorney's Fees (order) in which she denied all of the \$3,220.00 requested fees by the attorney. The attorney has appealed the hearing officer's order and the file does not contain a response from respondent 1 (claimant) or respondent 2 (carrier).

DECISION

Reversed and rendered.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorneys requested a total of 16.10 hours of time broken down as follows: 7.9 hours for preparation and attendance at the benefit review conference (BRC) and contested case hearing (CCH); 6.25 hours for review of documents, telephone and office conferences, legal research, drafting a letter, and completion of a claim form; .75 hours for receive/review documents and review of file; and 1.20 hours for travel time for attendance at the BRC and CCH. The Attorney Fee Processing System printout reflects that the hearing officer denied all of the time requested for the following reason: "unable to process because cannot tell what services were rendered for the [supplemental income benefits (SIBs)] case that I heard." We find that the hearing officer abused her discretion in this regard. The dates claimed for preparation, travel time, and attendance at the proceedings were for the exact dates that the BRC and CCH were held as reflected by the decision and order. The dates included in the itemized listing of attorney's fees for communications, research, review of documents, and the other actions taken were for the most part at or near the time of the BRC, CCH, or shortly after the decision and order was rendered by the hearing officer in this case.

The reason for the denial does not list the hourly rate requested as justification for denial of the request for attorney's fees. In Texas Workers' Compensation Commission Appeal No. 030293, decided March 21, 2003, a decision regarding a claimant's attorney's fees in a SIBs case, the Appeals Panel ruled that a hearing officer had the discretion to reject the evidence in support of the assertion that \$250.00 per hour was a reasonable fee, but determined that the hearing officer erred in reducing the hourly rate to \$150.00 because the carrier did not ask for that relief, and in granting that relief the hearing officer exceeded the scope of the issue before her, namely the resolution of the issue of whether the \$250.00 hourly rate should be approved. In that case, the Commission's order had approved a \$200.00 hourly rate, and at the CCH the carrier's attorney agreed that the \$200.00 hourly rate awarded by the Commission was a reasonable fee, but argued that the \$250.00 hourly rate should be reduced. Appeal

No. 030293, *supra*, rendered a decision based in part on the \$200.00 hourly rate that was approved by the Commission and not contested by the carrier.

We note that Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 152.1(f) (Rule 152.1(f)) provide that an attorney for an employee who prevails when a carrier contests a Commission determination of eligibility for SIBs shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits, and the fee shall not be limited to a maximum of 25% of the employee's recovery.

In view of the justification text provided by the attorneys in support of their request and the justification text given by the hearing officer to support her denial of the requested fees and the nature of the items in dispute, we reverse the Order and render a decision that the disputed items are approved for a total of 16.10 hours of attorney time at \$200.00 per hour for a total approved fee of \$3,220.00.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge